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12
13 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
14
15

16 THE UNITED STATES OF AMERICA,)
17)
Plaintiff,)
18 v.)
19 SPOKANE COUNTY, WASHINGTON,)
20)
Defendant.)
21 _____)

Civil Action No.

COMPLAINT

1 The United States of America, by the authority of the Attorney General of
2 the United States and on behalf of the United States Environmental Protection
3 Agency (“EPA”), alleges as follows:

4
5 **NATURE OF THE ACTION**

6 1. This is a civil action brought pursuant to Sections 106, 107(a) and
7 113(g)(2) of the Comprehensive Environmental Response, Compensation, and
8 Liability Act (“CERCLA”), 42 U.S.C. §§ 9606, 9607(a) and 9613(g)(2). In this
9 action, the United States seeks to recover costs incurred, and to be incurred, by the
10 United States in response to the release and/or threatened release of hazardous
11 substances into the environment at or from the Vermiculite Northwest – Spokane
12 County Superfund Site (“Site”) and to require Defendant to implement a removal
13 action selected by EPA for the Site.
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15 **JURISDICTION AND VENUE**

16 2. This Court has jurisdiction over the subject matter of this action, and
17 the Defendant, pursuant to 28 U.S.C. §§ 1331 and 1345 and Sections 107 and
18 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b).
19

20 3. Venue is proper in this District under Section 113(b) of CERCLA, 42
21 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the claims arose, and the
22 threatened and actual releases of hazardous substances occurred, within this
23 judicial district.
24

DEFENDANT

4. Defendant Spokane County, Washington (“Defendant”) is the current owner of the Site, within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

5. Defendant is a “person,” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

STATUTORY FRAMEWORK

CERCLA

6. CERCLA provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release into the environment, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance. 42 U.S.C. § 9604(a).

7. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides:

(1) the owner or operator of a vessel or a facility, . . . shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . .

8. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), provides, in pertinent part, that:

In any such action described in this subsection [an action for recovery of costs under Section 107 of CERCLA], the court

1 shall enter a declaratory judgment on liability for response costs
2 or damages that will be binding on any subsequent action or
actions to recover response costs or damages.

3 9. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in relevant
4 part:
5

6 [W]hen the President determines that there may be an imminent and
substantial endangerment to the public health or welfare of the
7 environment because of an actual or threatened release of a
hazardous substance from a facility, he may ... secure such relief as
8 may be necessary to abate such danger or threat

9 10. By Executive Order 12580 of January 23, 1987, the President's
10 functions under 42 U.S.C. § 9606(a) have been delegated to the Administrator of
11 the EPA.
12

13 **SITE DESCRIPTION AND BACKGROUND**

14 11. The Site, located at 1318 North Maple Street in Spokane, Washington,
15 encompassing about 2.5 acres, is the location of a former vermiculite processing
16 facility. Between about 1951 and 1973, the Site was operated by Vermiculite-
17 Northwest, Inc., and subsequently by W.R. Grace & Co., both of which transported
18 raw vermiculite ore from a mine in Libby, Montana to the facility for processing
19 and packaging into consumer products.
20

21 12. Defendant Spokane County purchased the Site in 2000 and is the
22 current owner of the Site.
23
24

1 13. In 2000 and 2001, EPA conducted sampling at the Site that identified
2 the presence of asbestos in the soil.

3 14. In 2002, EPA conducted a further study to characterize the asbestos
4 in the soil at the Site, which showed that the asbestos includes the same type of
5 asbestos that occurs in vermiculite ore from the mine in Libby, Montana, and the
6 asbestos can become airborne if the soil is disturbed.

7 15. In 2006, Spokane County conducted studies on the extent of asbestos
8 contamination at the Site, and as a result, Spokane County and the Washington
9 Department of Ecology determined that the encapsulation of contaminated soils in
10 place was a more feasible alternative than removal and off-site disposal of the
11 contaminated soils. In 2007, Spokane County designed and installed an asphalt
12 and soil cap at the Site.

13 16. EPA conducted additional investigations at the Site in 2009, which
14 concluded that future land use activities at the Site that involve significant soil
15 disturbing activities could cause the release of asbestos to the air, resulting in
16 potential asbestos exposures that could pose a health risk to Site workers, adjacent
17 residents and passers-by.

18 17. EPA selected a removal action for the Site, set forth in an Action
19 Memorandum issued on August 24, 2011. The selected removal action consists of
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1 requiring the owner of the Site to record and comply with appropriate institutional
2 controls.

3 18. As of May 31, 2014, EPA has unreimbursed response costs for the
4 Site in the amount of \$101,796.50.
5

6 **FIRST CLAIM FOR RELIEF**
7 **(Recovery of Response Costs under CERCLA, 42 U.S.C. § 9607)**

8 19. The allegations of the foregoing paragraphs are incorporated herein by
9 reference.

10 20. There have been “releases” within the meaning of Section 101(22) of
11 CERCLA, 42 U.S.C. § 9601(22), as well as the threat of continuing releases of
12 hazardous substances, including asbestos, into the environment at and from the
13 Site.

14 21. Asbestos is defined as a “hazardous substance” pursuant to Section
15 101(14) of CERCLA, 42 U.S.C. § 9601(14).
16

17 22. The Site is a “facility” within the meaning of Section 101(9) of
18 CERCLA, 42 U.S.C. § 9601(9).

19 23. The United States has incurred, and will continue to incur, response
20 costs as defined by Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§
21 9601(25) and 9607(a), to address releases and/or threatened releases of hazardous
22 substances at or from the Site.
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1 24. The costs of the response actions taken by the United States in
2 connection with the Site are not inconsistent with the National Contingency Plan,
3 40 C.F.R. Part 300.

4 25. Pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1),
5 Defendant is a current owner of the facility and liable for all response costs
6 incurred by the United States in connection with the Site.

7 26. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2),
8 Defendant is liable for a “declaratory judgment on liability for response costs . . .
9 that will be binding on any subsequent action or actions to recover further response
10 costs.”
11

12
13 **SECOND CLAIM FOR RELIEF**
14 **(Injunctive Relief under CERCLA, 42 U.S.C. § 9606)**

15 27. EPA has determined that there is or may be an imminent and
16 substantial endangerment to the public health or welfare or the environment
17 because of actual and/or threatened releases of hazardous substances into the
18 environment at and from the Site.

19 28. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a),
20 Defendant is subject to injunctive relief to record and comply with the institutional
21 controls for the Site, as selected by EPA in the removal action set forth in the
22 August 24, 2011 Action Memorandum, which EPA has determined is necessary to
23
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1 abate the danger or threat presented by releases or threatened releases of hazardous
2 substances into the environment at and from the Site.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff the United States of America respectfully requests
5 that the Court:
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7 1. Award the United States a judgment against Defendant for all costs
8 incurred by the United States in connection with the Site, plus interest;

9 2. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2),
10 enter a “declaratory judgment on liability for response costs . . . that will be
11 binding on any subsequent action or actions to recover further response costs.”;
12

13 3. Order the Defendant to implement the institutional controls for the
14 Site as selected by EPA in the removal action set forth in the August 24, 2011
15 Action Memorandum; and

16 4. Grant such other and further relief as this Court deems appropriate.

17 Date: January 23, 2015

18
19 Respectfully submitted,

20 FOR THE UNITED STATES:
21

22 THOMAS A. MARIANI, JR.
23 Deputy Section Chief
24 Environmental Enforcement Section
Environment and Natural Resources Division

United States Department of Justice

/s Erika M. Zimmerman
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